

**WAUKESHA COUNTY  
MINUTES OF THE PARK AND PLANNING COMMISSION  
THURSDAY, MARCH 18, 2004, 1:00 P.M.**

---

**CALL TO ORDER:**

Vice-Chairperson Janusonis called the meeting to order at 1:00 p.m.

Commission

Members Present: Vy Janusonis, Vice-Chairperson  
Mareth Kipp (Left at 4:15 p.m.)  
Walter Kolb  
Walter Baade  
Joseph LaPorte (Left at 4:00 p.m.)  
Bob Hamilton

Commission

Members Absent: Betty Willert, Chairperson  
Ellen Gennrich

Staff

Members Present: Richard L. Mace, Planning and Zoning Manager  
Kathy Moore, Senior Planner  
Sherrie Villarreal, Clerk Typist III

Guests Present:

Keith Koppen  
Tom Munsie  
Carol Hynes  
Dan Russ  
Tim Day  
Nate Cobb  
Diane Higgins  
Attorney Augie Fabyan  
Ken Herro  
Frances Vosburg  
Mark Ridgman

**MINUTES:**

**February 5, 2004 Minutes (Regular Meeting)**

*Mr. Baade moved, seconded by Mr. Kolb and carried unanimously for approval.*

**February 19, 2004 Minutes (Joint meeting of LUPE and Park and Planning Commission)**

*Mr. Kolb moved, seconded by Mr. Baade and carried unanimously for approval.*

**PUBLIC COMMENT:**

Vice-Chairperson Janusonis asked if anyone from the audience wished to address the Commission? There being no one, he moved to the next item on the agenda.

- **PO-04-GNT-6 (Paisano's Pizzeria, LLC) Town of Genesee, Section 27**

Mr. Mace presented the "Staff Report and Recommendation" dated March 18, 2004, and made a part of these minutes. He pointed out the location of the property on the aerial photograph and stated the petitioner is requesting a Site Plan/Plan of Operation for a change in owner/operator for Unit "A" of the "Friends of Nature" building currently used by the T-Rex Pizza Company. He said changes would be made to the existing signage with the addition of one sign located on the northeast side of the building. Mr. Tom Munsie, Jr. (petitioner) introduced himself and stated he had no additional comments, other than what was presented in the "Staff Report and Recommendation".

*After a brief discussion, Mr. LaPorte moved, seconded by Mr. Baade and carried unanimously, for approval in accordance with the "Staff Report and Recommendation". The approval of this request, as conditioned, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.*

- **ZT-1525 (Text Amendment) Town of Mukwonago (To Create Section 2.02(72)(a) and Section 3.09(1)(J) and Define a "Special Exception" and to Allow the Town Plan Commission to Grant Specific Special Exceptions for Structures Adjacent to Lake Access Drives)**

Mr. Mace presented the "Staff Report and Recommendation" dated March 18, 2004, and made a part of these Minutes. The Commission reviewed the "Staff Report and Recommendation" which outlines the text amendments listed above.

*After a brief discussion, Mr. Hamilton moved, seconded by Mr. Baade and carried unanimously, for approval in accordance with the "Staff Report and Recommendation".*

- **SZ-1513 (Waukesha County Department of Parks and Land Use) Town of Summit and City of Oconomowoc (Update of the Town of Summit Shoreland Jurisdictional Zoning Map and the City of Oconomowoc Areas Annexed After May 1982)**

Mr. Mace presented the "Staff Report and Recommendation" dated March 18, 2004, and made a part of these Minutes. Mrs. Moore (Senior Planner) pointed out the Planning and Zoning Division is updating the jurisdictional zoning map for the Town of Summit of the Waukesha County Shoreland and Floodland Protection Ordinance for all areas within 1,000 ft. of any lake, 300 ft. of any river, stream, or the landward side of the floodplain in the Town of Summit and those areas of the City of Oconomowoc, which were annexed after May 1982. She noted the new map contains the most current information for the Town of Summit for recent wetland determinations, new navigability determinations, and the current City of Oconomowoc boundaries and serves to implement the Waukesha County Development Plan by incorporating the Primary Environmental Corridor areas in the Environmental Corridor Zoning District.

*After discussion, Mr. Baade moved, seconded by Mr. LaPorte and carried unanimously, for approval in accordance with the "Staff Report and Recommendation".*

**SCHEDULED MATTER - 1:15 p.m.:**

- **SZ-1514 (Waukesha County Department of Parks and Land Use) Towns of Eagle and Mukwonago) (From A-1 Agricultural, A-E Exclusive Agricultural Conservancy and C-1 Conservancy Districts to C-1 Conservancy, EC Environmental Corridor and A-1 Agricultural Districts)**

Mr. Mace presented the "Staff Report and Recommendation" dated March 18, 2004, and made a part of these Minutes. He pointed out the location of the property on the aerial photograph. He said the proposed rezoning was to update certain sections of the Towns of Eagle and Mukwonago District Zoning Maps

related to the Mukwonago River under the jurisdiction of the Waukesha County Shoreland and Floodland Protection Ordinance in order to implement the Dam Failure Analysis for the Wambold and Kroll Dams on Eagle Spring Lake in accordance with NR-116.09 of the Wisconsin Administrative Code.

Mr. Mace said a Dam Failure Analysis was prepared by Graft, Anhalt & Schloemer Consulting Firm for work that the Eagle Springs Lake Management District is doing on the two dams which create Eagle Springs Lake. Mr. Hamilton asked when the NR-116.09 of the Wisconsin Administrative Code came into affect? Mr. Mace replied approximately 1968/1969 and stated all changes are required under NR-116.09 and Section 4.02 of the Waukesha County Shoreland and Floodland Protection Ordinance, and these mappings will incorporate the Dam Failure Analysis Study and update the jurisdictional zoning maps in accordance with the most current information. Mr. Kolb asked if a Dam Failure Analysis Study was required for every dam? Mr. Mace replied a Dam Failure Analysis Study is required by the Department of Natural Resources (DNR) when a dam may pose a possible hazard. There was discussion with regards to the FEMA floodplain, which will not be the same as the Dam Failure Analysis Flood Profile for flood insurance purposes. Mrs. Moore noted it was important for the Planning and Zoning Division Staff, when responding to lending institutions (relating to the floodplain), to use the FEMA Maps.

*After discussion, Mr. Hamilton moved, seconded by Mrs. Kipp and carried unanimously, for approval in accordance with the “Staff Report and Recommendation”.*

• **SVZ-1518 (Mike Herro/Jennifer O’Leary) City of Oconomowoc, Section 31 (From A-T Agricultural Land Preservation Transition District to the R-3 Residential District)**

Mr. Mace presented the “Staff Report and Recommendation” dated March 18, 2004, and made a part of these Minutes. He pointed out the location of the property on the aerial photograph. The Commission reviewed the C-1 shoreland area (northeast corner) on the map submitted with the “Staff Report and Recommendation”.

*After discussion, Mrs. Kipp moved, seconded by Mr. Kolb and carried unanimously, for approval in accordance with the “Staff Report and Recommendation”. The approval of this request will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.*

**SCHEDULED MATTER - 1:30 p.m.:**

• **SCU-116T (Higgins-Park Bay, LLC) Town of Oconomowoc, Section 36**

Mrs. Moore presented the “Staff Memorandum” dated March 18, 2004, and made a part of these Minutes. She pointed out the location of the property on the aerial photograph and stated the petitioner is requesting a Conditional Use Permit for the proposed grading for Lots 24 and 25 in order to construct two residences. On February 2, 2004, the Planning and Zoning Division received a Grading Plan, which did not comply with the January 8, 2004 Commission’s action. On February 5, 2004, the matter was held in abeyance until plans, as required in the January 8, 2004 action, were submitted for review. Those plans are to be at a scale of no more than 1” = 20’ and to include cross sections and designs of all swales, and a Vegetative Plan.

Mrs. Moore stated in January the matter was before the Commission, which was a three-part request: (1) to terminate the existing Conditional Uses for the Casa Rebecca restaurant/tavern property (SCU-116A, SCU-116C, SCU-116D, SCU-116F); (2) to allow the petitioners to retain the detached garage/boathouse structure on the northwest side of the property for a two-year period; and (3) to allow the petitioners to

retain the grading which had already occurred and that no additional grading to occur until a Plan is submitted to the Park and Planning Commission. She explained today the petitioners are asking for approval of the newly submitted plans.

There was discussion with regards to the basement floor elevation. Mrs. Moore stated the Planning and Zoning Division did not have a basement floor elevation, and one of the issues being that the petitioners changed the plan which was scaled to a 12 ft. basement height (the petitioners stated 10 ft.). Mr. Koppen (the surveyor) said Lot 25 is 885.2 ft. and Lot 24 is 894.0 ft. He stated when making the changes he missed the 3/10ths (4 inches). Mrs. Moore asked if the basement floor elevation on Lot 24 was 894.0? Mr. Koppen replied, "Yes". She asked if the deck was 894.0 also? Mr. Koppen replied, "Yes". She asked if the basement floor would be 1/10 of a foot higher than the deck on the westerly house? Mr. Koppen replied, "Yes." She also questioned if there would be steps on the other residence? Mr. Koppen replied, "No". Mrs. Kipp asked if there was a proposed deck or a patio? Mrs. Moore replied the plans show a floating slab.

Mrs. Moore reviewed the previous conditions from the January 8, 2004 "Staff Report and Recommendation" and modified/deleted the conditions with the Commission. The outcome is shown in the motion for approval listed on Pages 11 and 12 of these Minutes. (A copy of the January 8, 2004, "Staff Report and Recommendation" is attached as Exhibit "A".)

Mrs. Kipp asked Mrs. Moore how comfortable she was with this request? Mrs. Moore pointed out the petitioners still plan to grade towards the lake. She said the topographical maps indicate 55 ft. in front of the deck to the lake. Mrs. Kipp asked if there was a 20 ft. drop from the deck to the water? Mrs. Moore replied it was an 894 grade elevation and the 100 Year Floodplain is 875, which is about a 20 ft. drop. There was discussion if the deck was a patio because it was the same level as the basement grade. Mrs. Kipp asked when you leave the patio to get down to the lake, will there be steps to level it off? Ms. Higgins replied they were going to replace the old steps, which were removed as part of the removal request. Mr. Koppen said there will be 4 ft. wide concrete steps going down to the lake. Mrs. Moore read the following provision: *"Filling or grading considered by the Zoning Administrator to do necessary backfill and/or excavation for an otherwise permitted structure may be permitted without the necessity of securing a Conditional Use, as long as said filling or grading is accessory to the construction and does not create slopes greater than three to one (3:1) and does extend to an existence greater than 30' from the foundation, and does not convert water running directly onto to adjacent property or adversely affect adjoining property owners."*

Ms. Higgins passed out a Grading Plan of a similar lot owner who had a tavern removed, whereby a Conditional Use termination took place at the same time a Zoning Permit was issued. She pointed out there were no restrictions, deeds, criteria for submittal, and a \$70 fee was charged for the same thing she was requesting, which was a single-family residence on an existing lot. Mrs. Moore noted the issue was that the Casa Rebecca restaurant/tavern was over two lot lines. Ms. Higgins replied the restaurant/tavern was adjacent and almost touching the lot line.

Mr. Koppen stated on Lot 24 there was an existing house, a shed, a garage, retaining walls which were removed, and asked if you would call that grading or removal of existing buildings? Mr. Kolb asked if the petitioner took dirt off the hill? Ms. Higgins replied no dirt was removed, but slabs were removed and huge empty septic tanks. Mr. Kolb asked, excluding the filling of the basement and the septic tank, was there any change in the level of that land? Mr. Koppen replied they leveled the site off 2 ft. in some places and Ms. Higgins noted the existing elevation where the edge of the trees were, was untouched. Mrs. Kipp pointed out that is not what the photographs show. Ms. Higgins noted there was also a cutout where the driveway was, which was completed previously because the parking area was expanded. Vice-

Chairperson Janusonis stated he would like to refresh Ms. Higgins memory with photographs. Mrs. Higgins then reviewed the photographs of discussion. Mr. Kolb stated he thought the biggest issue was ground that was pushed over into the old parking lot, which had now been resolved. Mrs. Moore stated she wanted to review the photographs taken from across the lake which illustrated the Casa Rebecca restaurant/tavern and the slope of the hill. Mrs. Kipp asked if the parking lot was paved and Attorney Fabyan said, "Yes, the removal of the asphalt parking lot, which was required by the Planning and Zoning Division Staff, was considered grading." Mrs. Moore pointed out she did not want the parking lot buried and Attorney Fabyan replied it was not buried, but removed.

Mrs. Kipp asked if the entrance to the property would be changed or would each lot share a common driveway? Mrs. Moore replied, "No, there would be individual driveways." She stated the new plan illustrates the driveway going around the septic and stated she went over the matter with Steve Hoelz (Environmental Health Sanitarian) who seems to feel the septic systems are protected on this layout. The Commission reviewed photographs which illustrated different angles, etc. Mr. Baade stated, "There is a highly erodable situation here and it would be a good idea to get it resolved as soon as possible and I would like to make a motion to approve the request as conditioned, including any modifications, excluding the conditions that are not pertinent anymore."

Attorney Fabyan addressed the Commission. He stated there is no dispute of the removal of the Casa Rebecca restaurant/tavern before granting Zoning Permits. He stated Debbie Price, Kathy Moore, and Diane Higgins had a meeting on February 9, 2004, whereby there were miscommunications and misunderstandings. Attorney Fabyan pointed out in his letter dated March 18, 2004, to the Park and Planning Commission is a documentation of his thoughts/impressions of the February 9, 2004 meeting (see attached Exhibit "B"). He said there is no doubt these are separate lots of record owned by Donald and Diane Higgins. He submitted comparable Grading Plans to the Commission of the Roadhouse (located in downtown Okauchee) and the Tailers' (located on Wisconsin Avenue). He said there is concern Ms. Higgins was treated unfairly and he would like to bring this to the Commission's attention. Attorney Fabyan stated right now they have a plan that is 30 ft. from the foundation and didn't feel a Conditional Use Permit is required. He objected to any conditions being placed on the granting of the Conditional Use Permit. He said he is taking the position everything the petitioners are doing is in total compliance with the Ordinance and pointed out that plans were redone and the grading completed was common when you raze a building.

The Commission reviewed photographs of the site. Mrs. Kipp (while looking at a photograph) stated there seems to be a considerable hill. Attorney Fabyan said there still is one side. He pointed out on the plan the lake and gravel pit area, where it was dug out to remove the old systems and blacktop, and stated nothing was done on the lakeside at all. Mr. Hamilton reviewed the photographs with Mr. Fabyan and the Commission. Mr. Mace asked if there were three structures, plus the Casa Rebecca restaurant/tavern removed from the site? Mr. Koppen replied there were probably seven different structures.

The following is a discussion with regards to the unimproved portion of Gietzen Road. Attorney Fabyan stated the Town has passed an "As Built Ordinance". He stated he didn't know what Attorney Chapman (Town Attorney) was doing with regards to correcting the roads, that he did his job and sent Attorney Chapman a proposed Ordinance. He indicated the statutes state when funds have not been spent on the road for 10 years, the road is abandoned. Mrs. Moore reiterated she has been asking Mr. Chapman to handle this matter since October 2003. Mr. Koppen said the road was never definable or built, and the existing Gietzen Road was being utilized. Mrs. Moore said the issue is who owns the land within the right-of-way? Mr. Fabyan replied the two adjacent property owners own the road. Mrs. Moore said in order to issue the Zoning Permit the road needs to be transferred to the adjacent property owners.

Attorney Price addressed the Commission and stated by now the Commission has heard very different opinions regarding the recent history of these parcels. She said last time they were moving in the right direction. Two out of the three concepts were decided by the Commission and they were left with the Grading Plan, and whether or not extra conditions should be attached to an approval. She suggested to put that behind and get back to what type of resolution should take place, and noted that the single-family residence in each lot is a permitted use. The petitioners are saying if you don't allow us to do that, you are making a regulatory taking and stated the Commission is hung up on what to do with the grades. Attorney Price stated the petitioners are correct that our Ordinance allows grading within 30 ft. of the foundation, but we differ in the opinion this is a "normal" situation. She suggested the Commission re-focus on what they would like to see with regards to single-family homes being constructed on these lots. Then address the conditions which have been proposed by the Planning and Zoning Division Staff, as some of those conditions are relevant and some have been eliminated. Mr. Hamilton asked, assuming that a Conditional Use is required and single-family homes are a permitted use, is it up to the Commission to establish the conditions by which the petitioners should abide by? Attorney Price replied, "Exactly, and it is our position a Conditional Use is needed because: (1) the extent of the grading, and (2) the petitioners have applied for it.

Mr. Hamilton was concerned about the drainage. Mrs. Moore stated the petitioner would keep the drainage on the property. She said previously, Lot 24 was draining across Lot 25, and now it looks like the problem has been solved. Mr. Hamilton asked where is the water going to go that comes off the roof, etc., and will there be enough capacity in the swale? Mr. Koppen replied they have deepened the swale, which should eliminate the additional drainage. Mr. Hamilton was also concerned about the Vegetation Plan lakeward of the structures and patios, which was not shown. Attorney Fabyan said the petitioners install trees and plantings, but the new buyers would complete the landscaping. He said grass will be installed and there will be no runoff, etc., and reiterated that with a new-construction home of this caliber the potential owner will have a suitable Landscape Plan. Mr. Hamilton was concerned because he has seen this landscaping problem before, which was the subject of a many court cases.

Vice-Chairperson Janusonis stated it was the Commission's purpose to protect the lake and put minimum standards on the kind of vegetation, etc. Mr. Hamilton stated the concern for vegetation is covered in Condition No. 18 which reads, *"The Drainage Outlet Design and how it will impact and flow to the lake from the drainage swales down the steep vegetated slope, must be submitted to and approved by the Waukesha County Land Resources Division and the DNR, if necessary."* He said it looks like it will be a sheet flow. Mr. Koeppen said, "The last time I had it going all the way to the lake I was criticized, so that is why I left it as a sheet flow."

Mr. Baade stated he would like to make a motion approving the request, incorporating the conditions which are still pertinent, conditions expressing the grading and vegetation issues, and the date of the two-year period for the garage commencing April 1, 2004. Mrs. Moore said she wanted to clarify Condition No. 2 pertaining to the garage, for the two-year period and a \$3,000.00 Letter of Credit to insure removal, that the garage had to be removed prior to sale or transfer of the lots. Ms. Higgins questioned why do you need the money? Mrs. Moore replied to make sure the garage would be removed. Vice-Chairperson Janusonis noted it was a precautionary measure, and if the applicant fails to meet that condition, it is guaranteed someone pays for it. He stated this has happened in the past, otherwise there would not be this kind of condition. With respect to the garage, a Variance was not required because it is an accessory building and was not before a principle structure, and had a drop-dead date of two years.

Mrs. Moore asked if Condition No. 3 should stay in? She stated Condition No. 3 refers to the security of Lots 24 and 25, which has been satisfied. She then asked the Commission if they wanted to keep Condition No. 4, which refers to no piers/boats being allowed other than owned and titled to the owners?

The Commission replied "Yes". She asked if Condition No. 5 should stay in, because of concerns of grading occurring on Lots 23 and 26? Mrs. Moore stated the plan doesn't show water running onto the adjacent properties anymore. She said, with regards to the grading of Lot 26, the petitioners did not want to make these lots part of the request. Attorney Price said this application is regarding Lots 24 and 25 only, so she suggested saying that Lot 26 is not encompassed in this application and when someone would seek a Zoning Permit that lot could be addressed, and if they would seek to fill in the shoreland jurisdiction they would need a Permit at that time. Mr. Shaver (Director of the Department of Parks and Land Use) suggested that the Planning and Zoning Division Staff try to figure out what was authorized under the Razing Permit and what constituted grading beyond the Conditional Use Permit.

Mrs. Moore stated Conditions No. 5, 6 and 7 will be removed. Condition No. 8 will remain, with the exception of the date being changed to March 11, 2004. Condition 9 will remain, stating the Grading Plans and Vegetative Plans, which include seed or sod, must be completed in accordance with the March 11, 2004 Plan.

Attorney Price asked who would be doing the certification? Mrs. Moore replied a Certified Engineer. Mr. Hamilton stated the Planning and Zoning Division Staff will determine the vegetation, but a surveyor needs to attest to the grades and the basement elevation. The Commission decided that Condition No. 10 should remain. Attorney Fabyan said that condition is a problem because: (1) the DNR requires that you come in with an After-the-Fact Permit to begin with; (2) there is some dispute as to whether or not the removal of this blacktop was grading or earth-altering activities; and (3) it will take at least six months to receive a Permit. Mrs. Moore said if the petitioners would have applied for the Permit in November 2003, they would have it by now. Attorney Fabyan said the petitioners do not want a Permit until they know what the grades are. Mr. Hamilton said the petitioners had a Razing Permit and had authorization to remove the blacktop. He said the DNR indicated the earth-altering activities without the parking lot were not enough to require a Chapter 30 Plan, but while they were razing the buildings they were told they needed to pick up the blacktop and dispose of it in a safe manner, and once they started doing that they were in violation of the Chapter 30 Permit. He said the petitioners were caught in the middle. Ms. Higgins stated it could be done after the fact.

Mrs. Moore said Condition No. 11 was applicable and Condition No. 12 was not. Condition No. 13 is completed. She said with regards to Condition 14, if the Town owns the property how do we issue a Zoning Permit that may be too close to somebody else's ownership? She stated, "We have been trying to get this completed since October 2003." Ms. Higgins stated it has been in existence for almost 100 years. Mrs. Moore said how do we deal with the issuance of the Zoning Permit too close to somebody else's ownership? Mr. Hamilton replied you couldn't if the land is not under the ownership of the petitioner. Mrs. Moore said, according to our office and the Register of Deed's office it shows the Town still owns that strip of land. Mr. Hamilton said that issue must be resolved. Mrs. Moore asked can we issue a Permit knowing that something is too close to the lot line without a Variance? Attorney Fabyan replied you could look at the fact that the statutes state the road hasn't had any money spent on it in over ten years, which is officially abandoned by statute. Mrs. Moore said the public record doesn't show that.

Mr. Hamilton asked when did this request originally start? Mrs. Moore replied in August 2003. Attorney Fabyan said he sent the proposed Resolution to the Town. Mr. Baade said he would call Attorney Chapman (Town of Oconomowoc Attorney) with regards to this matter. Mrs. Moore said she has already made a telephone call to Attorney Chapman's office. Mr. Hamilton said with regards to Condition No. 14, he wanted a specific paragraph urging the Town to proceed. Mrs. Moore stated she could write a letter to the Town with regards to Condition No. 14 and indicated the Town Board was meeting the first week of April 2004.

Mrs. Moore said with regards to Condition No. 15, she didn't know if a Vegetative Plan was pertinent anymore. Mrs. Kipp said she could not support this request and indicated in the past the Commission has required property owners on the lakes to submit a suitable Landscape Plan. Mr. Hamilton said in the past the Commission has granted Conditional Uses and did not require Vegetation Plans. There was discussion between Mr. Hamilton and Mrs. Kipp regarding new construction and vegetation that would or would not be required. Mrs. Kipp said something needs to be done to ensure when the 100-year rains come that the grass won't be washed out.

Attorney Price suggested removing the requirement of a Financial Guarantee on Condition No. 15 unless the Commission would require that of other people constructing single-family residences. She said on Lot 24 there is natural vegetation and on the other lot it was a building and asphalt, so it is hard to determine what it should be restored to. Mrs. Kipp said there is 25 ft. drop from the house to the lake, which is a considerable slope. Attorney Price said that it was, but when she looked at Lot 24, if you stood at the top of it, it was still natural and vegetated with whatever had been there before. Mr. Koppen stated the petitioners sodded Lots 24 and 25, 50 ft. from the lake.

Mr. Shaver said he thought the two things the Commission were gabbling about were: (1) when you conduct a grading activity you want to make sure that you stabilize the site adequately so sedimentation doesn't go into lake (he thought the Commission addressed that as a condition); and (2) Condition No. 15 seems to address the restoration of what was there previously and what we are finding is a grass shoreline or asphalt. He said he agreed with the other Commissioners that some day he would like to see more naturalization of shoreline, but didn't think the provision was in the current Code. Mrs. Moore replied there is a provision in the Ordinance which states the purpose of tree and shrubbery-cutting regulations applicable to the shoreline areas to protect scenic beauty, erosion, reduce affluent nutrient flow from the shoreline.

Mr. Kolb asked if there were trees on the site previously? Mrs. Moore replied there were trees and reviewed photographs which reflected this concern. Mr. Kolb said the basic thing he wanted taken care of was that no erosion went into the lake. He indicated, after viewing the photographs, that has been accomplished. Mr. Mace recommended when House Plans are submitted they be accompanied by a satisfactory Landscaping Plan. Vice-Chairperson Janusonis reiterated Condition No. 9 addresses the stormwater and erosion control problems. Attorney Fabyan said most Landscaping Plans never come before the Park and Planning Commission and the petitioners are entitled to have the same rights as other persons. There was discussion with regards to Condition No. 9, which refers to the Grading Plans being completed in accordance with the March 11, 2004 Plan. Attorney Price said if there is so much concern regarding vegetation, perhaps it shouldn't be delegated to the Planning and Zoning Division Staff, because they don't know what the Commission would like to see. Mrs. Moore suggested coming back to Condition No. 15 later.

Mrs. Moore said with regards to Condition No. 16, the date shall be changed to March 11, 2004. Attorney Price suggested combining Condition No. 8 and 16. Attorney Price stated she thought earth-altering activities make it too broad a category. Vice-Chairperson Janusonis suggested to say "earth-altering". Attorney Fabyan said whomever buys this house will add more fill to the back of the lot when sewer comes through. Attorney Fabyan said the only reason why fill is limited in the back is to maintain the septic site and the back of the lot was disturbed and turned into a gravel pit when Terry Schmechel (previous owner) installed his septic system. Mr. Hamilton stated they are talking about earth-altering activities lakeward of the residence. It was decided Condition No. 16 should reference "earth-altering activities as lakeward of the residence." Attorney Price asked if Condition No. 16 reflected both Lots 24 and 25? Mrs. Moore replied "Yes". Attorney Price asked if Conditions No. 8 and No. 16 were different from each other? Mrs. Moore stated Condition No. 8 refers only to retaining walls, which is why she



suggested putting earth-altering activities and grade changes in accordance with that plan, and eliminating Condition No. 16 and adding to Condition No. 8 "earth-altering activities and grade changes lakeward of the residence."

Mrs. Moore asked the Commission (with regards to Condition No. 17) if the swale should be installed before the basement is dug, so water will not run onto the neighbor's property to the east? Mr. Koppen replied if you place the swale too close to the site or construction, it would be difficult. He suggested putting the swale on Lot 23, because the ground would be disturbed when you bring in construction equipment. Mr. Hamilton asked, "So you are saying there will be no drainage from Lot 24 onto Lot 23?" Ms. Higgins replied, "None, because it is impossible." Mrs. Moore asked Ms. Higgins when the basement is dug where will the stockpiles be placed? Mr. Koppen replied the stockpiles are usually hauled out before the grade goes down on Lot 23. He said the way to resolve this is to place a silt fence along the lot line prior to grading and excavation of the site. He said no construction equipment will end up on Lot 23 and all grading can be done from west to east. Mrs. Moore asked the Commission if they would like to take Condition No. 17 out? Mr. Hamilton, "Yes, the swale would be covered in Conditions No. 8 or 9."

Mrs. Moore said with regards to Condition No. 18, did the Commission want the Drainage Outlet Design submitted prior to issuance of the permits? Attorney Price asked if that was part of the Erosion Control Permit? Mrs. Moore replied, "Not necessarily, because it is less than one acre of disturbance on each lot, they'll just issue where the silt curtain goes and may not look at that." Mr. Hamilton stated he thought it needed to be looked at and asked if the petitioners intend to do the site work all at once on both the lots? Ms. Higgins replied, "I can't speak for other people." Mr. Hamilton suggested to require a Drainage Plan. Mrs. Moore suggested getting a Construction and Stockpiling Plan along with the Drainage Outlet Design, because it will tell the Planning and Zoning Division Staff how this work will be completed. There was concern that rooftops and pavement would create drainage. Mr. Hamilton asked if the water issue would be referenced in Condition No. 5 or Condition No. 11? Mrs. Moore replied it would be addressed in Condition No. 11, whereby it states an Erosion and Stormwater Management Permit has been issued by the Waukesha County Land Resources Division. She said the problem is under their Permit, if it is less than one acre they only look at where the silt curtains go unless the Park and Planning Commission would direct something else. Vice-Chairperson Janusonis stated he thought the Commission should look more deeply at this. Mrs. Moore suggested combining Conditions No. 18 with No. 11.

Mrs. Moore asked if there were any other concerns by the Commission? Mrs. Kipp had concerned with regards to Condition No. 15, which refers to the Landscaping Plan? She stated she thought the Commission would be negligent if they didn't include some kind of buffer. Vice-Chairperson Janusonis stated this is not a million dollar investment and putting in a few shrubs would not be asking too much. Mr. Mace stated the shoreline clearing issue was violated. Ms. Higgins replied, "No, and don't tell me that taking the building down has anything to do with violating your shoreline?" She said her rights have been violated and she has done everything in her power to meet the Ordinances. She suggested the Commission read the Planning and Zoning Division's request for her to tear down the Casa Rebecca restaurant/tavern. Mrs. Moore replied the issue is that the building is over a lot line. Ms. Higgins noted there was a building that was straddling two individual's lot lines which are owned by different people who already have a Zoning Permit in their hand, and are ready to tear down the building and begin construction. She stated the Commission handles requests differently for each person. Vice Chairperson Janusonis replied this was not an ordinary request and that circumstances are different. Mrs. Higgins stated she submitted the proposal and requested it be looked at ahead of time and there was nothing unusual about her request.

Mr. Hamilton requested Mrs. Moore to read the provision in the Ordinance regarding vegetation. Mrs. Moore said the Ordinance states, *"The purpose of tree and shrubbery cutting regulations applicable to the shoreland area is to protect scenic beauty, controlled erosion, reduce effluent and nutrient flow from the shoreland. The provision shall not apply for the removal of dead, diseased or dying trees or shrubby at the discretion of the landowner or silvicultural thinning upon recommendation of a forester. (A) Shoreland Cutting – tree and shrubbery cutting in an area of parallel to the ordinary high water mark extending 35 ft. inland from all points along the ordinary high water mark shall be limited in accordance with the following provisions: (1) no more than 30 ft. in any 100 ft. as measured along the ordinary high water mark may be clear cut to a depth of a 35 ft. wide area; and (2), natural shrubbery shall be preserved as far as practical and where removed shall be replaced with other vegetation that it is equally effective in retarding runoff and preventing erosion and preserving natural beauty.* Mr. Hamilton asked if there was any activity within that 35 ft. of area along the shoreline, or were any trees cut or shrubbery removed? Mrs. Moore stated she thought trees were removed and stated there were photographs which indicated this. The Commission reviewed photographs of the site taken from across the lake. Ms. Higgins stated some of the trees had to be cut down to enable the machinery/equipment to come in and tear down the building. Vice Chairperson Janusonis suggested for Ms. Higgins to review the photographs showing the tree stumps. Mrs. Kipp suggested the Commission require restoration within 35 ft. of the lake, which is what the Ordinance requires. Ms. Higgins replied they had vegetation 35 ft. from the lake and stated she did, in fact, meet the Ordinance. She reiterated when the building was taken down they needed clearance for the large machinery. Vice-Chairperson Janusonis stated that is the cost for removal. The Commission reviewed the photograph of the tree stumps. It was determined there were no trees hanging over the building. Mr. Kolb asked Ms. Higgins if the trees were close enough to the building to impede the construction of the building? Ms. Higgins replied, "No, but there had to be room for the machinery to come in." Mr. Koppen said, "There is a safety factor that the excavator is not going to get inside the building and fill it up with dirt and then dig the walls into the inside, he has to take out from the outside." He said at the southeast corner of the building there were trees, which would impede getting a backhoe in there.

Mr. Hamilton pointed out he was not going to vote against the Conditional Use request whether or not the Vegetative Plan is submitted. He said what is being proposed is a substantial improvement over what was there previously. The Ordinance contains provisions relative to Vegetative Plans stating: (1) to prevent erosion and sedimentation in the lake, and (2) to protect some kind of visual shoreline aesthetic view, which is strictly subjective and the controlling of erosion and can physically be controlled with "nuts and bolts" engineering. He said it is difficult, because what is perceived by one person as natural vegetative covering may not be perceived the same way by another person. Vice Chairperson Janusonis asked how many trees were removed? Mr. Baade replied at least three trees. Mr. Koppen said there might have been five or six trees and he could not guarantee they were dead or diseased. Vice-Chairperson Janusonis said he concurs with Mr. Hamilton that this issue be resolved.

Vice-Chairperson Janusonis asked if it was the consensus of the Commission to say we have enough protection for the lakeshore? After additional discussion and reviewing Condition No. 9 again, Mrs. Kipp asked if there was a definition for a Vegetative Plan? Attorney Price suggested, in defining a Vegetative Plan, that seed or sod needs to be a part of that condition. Mr. Hamilton stated his concern was that no erosion goes into the lake, whether it is "seed or sod". Attorney Price said what she is hearing is the Commission is proposing to delete Condition No. 15 which addresses restoration, groundcover, etc., and if that is the motion do you want to rely on Conditional No. 9? She suggested the Vegetation Plan require "seed or sod" to establish grass. Mrs. Kipp stated it really bothers her that the Commission is setting a precedent by allowing "seed or sod" to become the groundcover choice. Mr. Hamilton stated he thought this was an exceptional case. Mrs. Kipp reiterated she did not agree and should not treat this request any different from anyone else who comes forward with changes on the

lakeside. Mr. Kolb asked if the Commission requires seed or sod groundcover and the DNR doesn't agree requires the petitioners do something else, is this the Park and Planning Commission's problem? Mrs. Moore answered the more restrictive would apply.

Mrs. Moore stated there was one other issue, whereby the petitioner should revise the House Plans so the Planning and Zoning Division Staff would know exactly what is going on, such as: size, windows, the depth of the basement, etc. It was decided a condition be added which requires a House Plan be submitted. Vice-Chairperson Janusonis asked if the Commission was agreeable with the amended conditions? The Commission members were satisfied with their discussion of the amended/deleted conditions.

*Mr. Baade moved, seconded by Mr. LaPorte (For: Vy Janusonis, Joe LaPorte, Walter Baade, Bob Hamilton -- Against: Walter Kolb and Mareth Kipp) to approve the new Grading Plan and authorize additional grading beyond that which was allowed to be retained on January 8, 2004, subject to the following conditions:*

- 1. The detached accessory garage presently existing on the north side of Lot 27 and partially on Lot 28, be allowed to remain for a period of not to exceed two years commencing on April 1, 2004, or no later than the occupancy of any new residences built on Lots 24 or 25, whichever occurs first.*
  - A. Prior to issuance of a Zoning Permit for Lots 24 and 25, a Letter of Credit for the removal and restoration and storage garage be submitted to the Planning and Zoning Division Staff in an amount not to exceed \$3,000.00.*
  - B. Prior to the sale or transfer or issuance of a Zoning Permit for Lot 27, the garage must be removed.*
  - C. If the subject detached accessory structure remains, it shall be used only for personal storage and only for items associated with the construction of the new residences on Lots 24 and 25. This does not include the storage of any boats or vehicles.*
  - D. While we recognize the fact the garage will exist on the parcel prior to the presence of a principle building now that the tavern has been removed, we feel a Variance is unnecessary in that said structure was previously authorized by the Board of Adjustment's action in 1977, and its continued presence is being limited by this Conditional Use Permit and will be removed in the near term, and will help to eliminate storage of undesirable construction materials that are open in the subject area.*
- 2. No piers or boats shall be allowed on any lots other than those owned and titled to the owners of the five lots for their personal use only.*
- 3. A Deed Restriction be placed on Lots 24 and 25 stating no retaining walls, earth-altering activities or additional grading lakeward of the residence, will be allowed on said lot except for that shown on the plans dated March 11, 2004.*
- 4. Prior to issuance of any Permits on the property, a Deed Restriction shall be placed on Lots 24 and 25 stating that prior to the sale of Lots 24 and 25, or the Occupancy Permits being issued on said residences, the Grading Plans and Vegetative Plans which include seeding or sod, must be completed in accordance with the March 11, 2004 Plan. Prior the sale, transfer, or*

*occupancy of the residences on Lots 24 and 25, the grading must be completed and stabilized in accordance with the approved Plan dated March 11, 2004, and certification by a licensed surveyor must be presented to the Planning and Zoning Division Staff.*

5. *Prior to issuance of a Zoning Permit and Conditional Uses for the residences on Lots 24 and 25, a Chapter 30 Permit shall be issued by the Department of Natural Resources (DNR) or written documentation presented from the DNR that Chapter 30 Permits are required, if determined to be appropriate by the Waukesha County Corporation Counsel's office. This is in accordance with Section 3.07(I)(3) of the Waukesha County Shoreland and Floodland Protection Ordinance.*
6. *Prior to issuance of a Zoning Permit and the Conditional Use Permit for the subject property, documentation shall be presented that an Erosion and Stormwater Management Permit has been issued by the Waukesha County Land Resources Division. This review of these properties for the Erosion and Stormwater Permit shall include the Construction Plan, location of the stockpiles, and the Drainage Outlet Design on how it will impact and flow to the lake from the drainage swales down the steep slopes and approved by the DNR, if necessary.*
7. *Prior to issuance of the Conditional Use Permit and issuance of the Zoning Permits, documentation must be presented that the Town has officially transferred the right-of-way of Geitzen Road to the individual property owners and said document be recorded in the Waukesha County Register of Deed's office.*
8. *Prior to issuance of a Zoning Permit and issuance of a Conditional Use Permit, the applicant shall revise the House Plans to include all appropriate grades, windows, and the appropriately scaled basement.*

- **(Gerald Ridgman) Town of Ottawa, Section 30**

Mr. Mace presented the "Staff Memorandum" dated March 18, 2004, and made a part of these Minutes. He pointed out the location of the property on the aerial photograph and stated the petitioner is requesting a lot not abutting a public road. Mr. Mace said. Mr. Ridgeman currently owns a 146-acre parcel and wishes to create a three-acre lot for his son.

*After a brief discussion, Mrs. Kipp moved, seconded by Mr. Baade and carried unanimously, for approval in accordance with the "Staff Report and Recommendation". The approval of this request, as conditioned, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.*

- **ZT-1507 (Text Amendment) Town of Eagle (Amendments to the text of Town of Eagle Zoning Ordinance)**

Mr. Mace presented the "Staff Report and Recommendation" dated March 18, 2004, and made a part of these Minutes. The amendment is to the text of the Town of Eagle Zoning Code to repeal and recreate various sections throughout the Ordinance, including, but not limited to definitions, accessory building locations, height restrictions, building size, signage, fencing around and location of swimming pools, revisions to Site Plan/Plan of Operation review, landscaping requirements, lighting standards, new Conditional Use provisions for ponds, ditching, grading, etc., communications towers, in-law units, modifications to minimum lot size standards for Planned Unit Developments, changes to various sections requiring the minimum size for attached garages, changes to the Upland Conservancy District to provide specific plans for building in order to protect the wooded areas and a new listing of uses permitted in the Industrial Districts. Mr. Hamilton pointed out Planning and Zoning Department spent a number of years

trying to get the Town of Eagle to accept some of these text amendments. He congratulated the Planning and Zoning Division Staff.

*After discussion, Mr. Hamilton moved, seconded by Mr. Baade and carried unanimously, for approval in accordance with the "Staff Report and Recommendation".*

• **ZT-1528 (Jean McKey and Dale Haessly) Town of Mukwonago, Section 9 (From R-1 Residential District to the R-2 Residential District)**

Mr. Mace presented the "Staff Report and Recommendation" dated March 18, 2004, and made a part of these Minutes. He pointed out the location of the property on the aerial photograph. Mr. Mace said the Town of Mukwonago requires when existing lots are combined the zoning must be changed to reflect the new lot size, which is what happened in this case. Mrs. McKey (the petitioner) has two existing lots and bought additional area to add to the two lots and combine them into one building site. There will be 36,400 sq.ft. in the new lot, which will be rezoned to the R-2 Residential District.

*After discussion, Mr. Hamilton moved, seconded by Mr. Baade and carried unanimously, for approval in accordance with the "Staff Report and Recommendation". The approval of this request, as conditioned, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.*

• **SCU-1343A (Wisconsin Department of Natural Resources) Town of Eagle, Section 36**

Withdrawn from the Agenda.

• **PO-04-OCOT-5 (Laird and Julie Geible/Wing Tai) Town of Oconomowoc, Section 36**

Mr. Mace presented the "Staff Report and Recommendation" dated March 18, 2004, and made a part of these Minutes. He pointed out the location of the property on the aerial photograph and stated the petitioner is requesting a Site Plan/Plan of Operation for a Chinese food carryout restaurant. The Commission thought the Plan of Operation was favorable, which will serve the downtown and surrounding area of Okauchee. Mr. Baade questioned Condition No. 3 of the Staff Recommendation which states, "A Zoning Permit must be approved and issued by the Planning and Zoning Division Staff prior to construction of the building." Mr. Mace pointed out this condition should be eliminated, as the building existed.

*After discussion, Mr. Hamilton moved, seconded by Mr. Baade and carried unanimously, for approval in accordance with the "Staff Report and Recommendation". The approval of this request, as conditioned, will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.*

• **(Loren Plehn Revocable Trust) Town of Vernon, Section 4**

Mr. Mace presented the "Staff Memorandum" dated March 18, 2004, and made a part of these Minutes. He pointed out the location of the property on the aerial photograph and stated the petitioner is requesting the following items: (1) a waiver of minor land division regulation requiring residual parcels of Certified Survey Maps to be mapped; and (2) retention of an agricultural structure on a parcel larger than 35 acres without a principal structure.

Mr. Mace said the owners are proposing to create two parcels off C.T.H. "XX", which has been approved by the County Department of Public Works. He stated the lot south of the house will be a remnant parcel and the street will be extended at some point in time and pointed out the Ordinance requires a Certified Survey Map for the remaining 77 acres. Mr. Baade questioned the 20 ft. planting strip which is on the Certified Survey Map as Exhibit "B"? Mr. Mace replied it was something the Town may have required.

*After discussion, Mr. Baade moved, seconded by Mr. Kolb and carried unanimously, for approval in accordance with the “Staff Report and Recommendation”. The approval of this request will allow the petitioner a reasonable use of his land and still promote and meet the intent and purposes of all County Ordinances.*

- **(Parks System Update)**

Request: Parks Update of Ice Arenas and Golf Courses by Peter Pulos, Enterprise Operations Manager.

Mr. Pulos said the main objective for the County Parks Division was to offer greater flexibility for customers. He said currently there is a Resident ID Card which has a fee of \$15.00 a year. Due to customer demand, the County will now offer a Non-resident ID Card at a fee of \$50.00 for non-County residents, which will enable golfers to receive the same discounts as the Resident ID Card. Mr. Hamilton asked if County golf courses were being playing to their maximum? Mr. Pulos replied there has been a decrease, which is a combination of weather and the economy. He felt with the new Non-resident ID Card and with new marketing strategies, there should be an increase in golf course usage. The Non-resident ID Card will be used at the three County golf courses which are: Wanaki, Naga-Waukeee and Moore Downs. There was concern Naga-Waukeee golf course would have too many reservations and the County golfers would be upset if non-resident golfers had first priority. Mr. Pulos stated Resident ID Card holders would have first priority. He pointed out Naga-Waukeee Golf Course has the biggest revenue of the three golf courses, but in recent years has showed a decrease in the number of golfers. He said last year there were approximately 50,000 golfers and five years ago there were approximately 63,000. Mr. Baade asked why was there such a decrease? Mr. Pulos replied because of inclement weather, a slow economy, and a number of subdivisions/developments are now including golf courses in their development. Mr. Hamilton asked what the break-even point was on the Non-resident and Resident ID Cards? Mr. Pulos replied for the Non-resident ID Card, approximately after the fifth round and for the Resident ID Card, approximately after the second round.

Mr. Hamilton questioned how the Automated Reservation System was coming along and if was accepted by the golfers? Mr. Pulos replied it was outstanding. For example: On Saturdays after 2:00 p.m. seemed to be a slow time for the golf courses, so the County e-mailed to over 2,000 e-mail addresses a coupon which provided a discount for persons to golf after 2:00 p.m. He said the response was unbelievable. He also stated golfers accepted the new system quite well. Mr. Pulos pointed out the proposed marketing strategies will create more revenue. One of the items offered at the County golf courses is called “First Tee Project” which teaches young girls how to golf.

Mr. Pulos said with regards to the ice arenas, there has been a decrease in utilization. He pointed out that Five Star hockey organization is utilizing County facilities, which profits at the County’s detriment. They have increased fees substantially, which causes teams to leave the County go to other ice arenas. For example, the Pettit Ice Center charges \$4,500 and Five Star charges \$6,700, which is \$2,200 more than the Pettit Ice Center. He noted Waukesha County is proposing to take over the league and operate as a County league. Rates would be around the \$5,000 range and the ice will be rented at the market price. He stated the middleman would be eliminated. The County league would run in the fall through the winter (September 2004 - March 2005) and in the spring through summer (April 2005 - June 2005). Mr. Hamilton asked if they are anticipating additional usage? Mr. Pulos replied he felt there would be additional usage because many County residents left the Eble and Naga-waukeee ice arenas to go to the Pettit Ice Center because of expensive fees they were paying to Five Star. Those people may want to utilize the County ice arenas because of the newly proposed lower fees. He said within the last five years there has been a drop in the amount of teams, from 34 to 24 (a loss of 10 teams, five games a week, seven to ten hours of ice time at \$200.00 per hour = \$2,000 revenue per week). Mr. Pulos noted Five Star is a

family run operation, which began as a second income venture for the family. He said the County has approached Five Star saying their operation is detrimental to the County's existence, whereby Five Star is making \$40,000 to \$50,000 a year on this league. He explained there are similar leagues, such as the Waukesha County Youth Hockey (a school group) which only breaks even with their revenue. He reiterated that Five Star was profiting off of the County's availability of ice time. Mr. Pulos noted the take over of the Five Star organization has been potentially approved. Mr. Hamilton asked if there was anything done to promote the ice arenas? Mr. Pulos replied though local newspapers, television, radio, e-mail/internet, schools, boys and girls organizations, etc.

Because of the time of day, the Commission asked Mr. Pulos to come back before the Commission again so he could go through the automated reservation system and new types of technology, which are utilized in the County Parks System. Mr. Hamilton said he would like to know the revenues and expenses for the ice arenas. Mr. Pulos said he would submit Year-end Reports for 2003. He said 2003 was a tough year, but the golf courses still brought in revenue. The ice arenas had decreased revenue because of the Five Star league mentioned earlier. The Exposition Center did fairly well with Harley Davidson's 100 Year Anniversary. Mr. Pulos said he would be happy to come before the Commission and walk them through the Internet showing how the Automated Reservation System and other technology is utilized by the County Parks System.

**ADJOURNMENT**

*There being no further business to come before the Commission, Mr. Baade moved, seconded by Mr. Kolb and carried unanimously, to adjourn at 5:00 p.m.*

Respectfully submitted,

Mareth Kipp  
Secretary

MK:smv